



20

1911  
JUL 2 1911  
JUL 2 1911

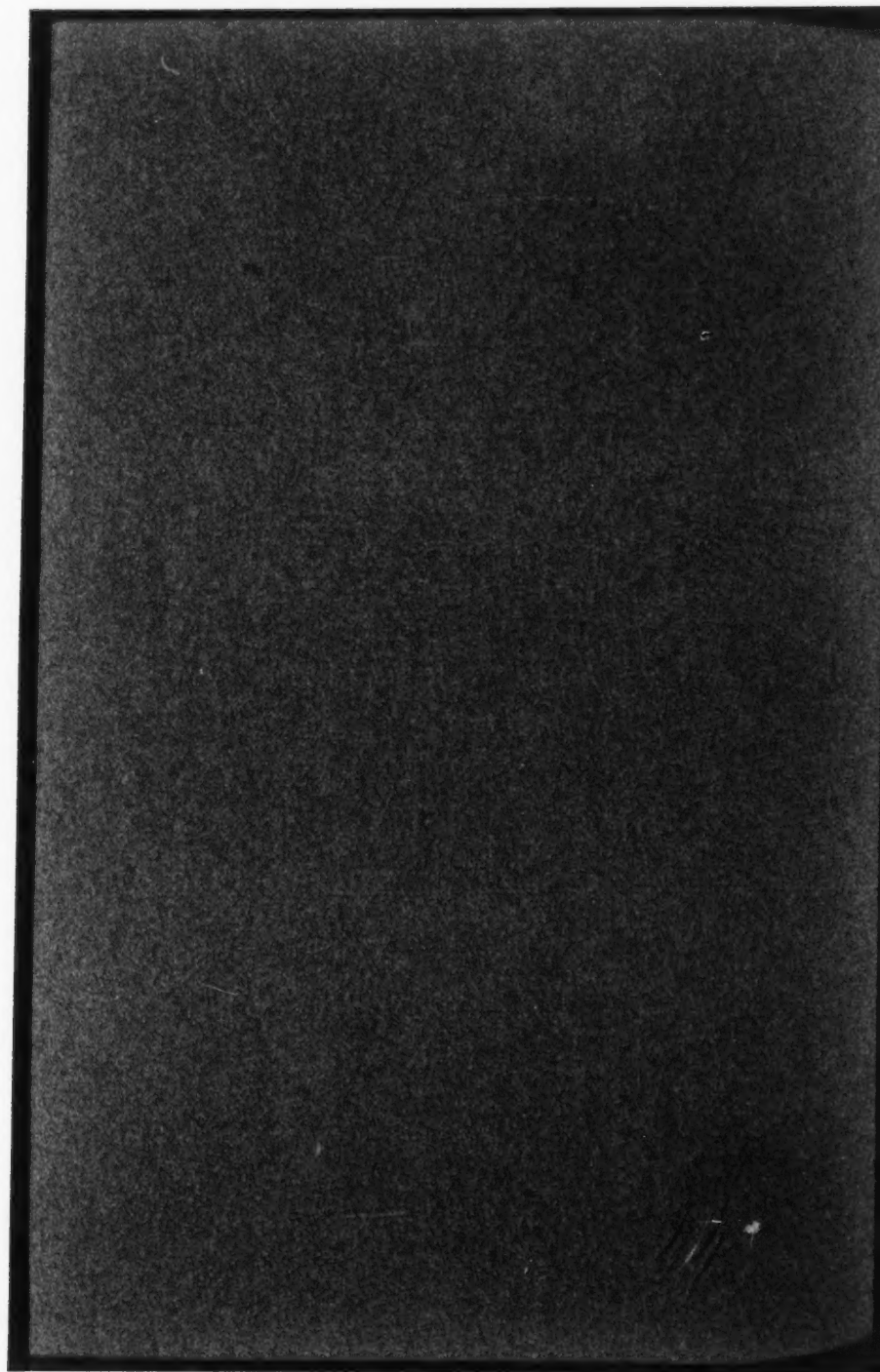
# THE JOURNAL OF THE

AMERICAN MEDICAL ASSOCIATION

QUARTERLY PUBLISHED

CHICAGO, ILL.

1911



# INDEX

Opinions below.....	Page
Jurisdiction.....	1
Question presented.....	1
Statute involved.....	2
Statement.....	2
Argument.....	6
Conclusion.....	8
Appendix.....	9

## CITATIONS

### Cases:

*Crouse v. State of Maryland*, 163 Md. 431..... 7

*Helvering v. Stuart*, decided November 16, 1942, Nos. 48 and 49, this Term..... 7

*National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240..... 8

*National Labor Relations Board v. Thompson Products, Inc.*, 97 F. (2d) 13..... 8

### Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*):

Sec. 10 (c)..... 9

### Miscellaneous:

Restatement of Agency:

Section 469..... 7

(1)



# In the Supreme Court of the United States

OCTOBER TERM, 1942

---

No. 706

QUALITY AND SERVICE LAUNDRY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH  
CIRCUIT

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN  
OPPOSITION

---

## OPINIONS BELOW

The *per curiam* opinion of the court below (R. 251-253) is reported in 131 F. (2d) 182. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 3-25) are reported in 39 N. L. R. B. 970.

## JURISDICTION

The decree of the court below (R. 254) was entered on November 6, 1942. The petition for writ

(1)

of certiorari was filed on February 4, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

#### QUESTION PRESENTED

Whether that portion of the Board's order, sustained by the court below, which requires petitioner to offer reinstatement to striking employees who under color of legal right collected and retained money claimed by petitioner, is valid and proper.

#### STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act is set out in the Appendix, *infra*, p. 9.

#### STATEMENT

Upon the usual proceedings, the Board, on March 21, 1942, issued its findings of fact, conclusions of law, and order (R. 1-25). The Board found that petitioner had refused to bargain with the Union,<sup>1</sup> which a majority of its drivers had designated as their collective bargaining representative, and had otherwise interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by the Act, and that, because of these unfair labor practices, the Union called a strike at

---

<sup>1</sup> Teamsters Joint Council #55, affiliated with the American Federation of Labor through International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (R. 4).

petitioner's plant (R. 4-17). As a remedy for the unfair labor practices found, the Board ordered petitioner to cease and desist therefrom; upon request, to bargain collectively with the Union; to reinstate, upon application, all but two<sup>2</sup> of the striking drivers; and to post appropriate notices (R. 23-25).

Among the striking drivers required by the Board's order to be offered reinstatement were eight whom petitioner contended it should not be required to reinstate because they had collected and retained certain sums of money belonging to petitioner. The circumstances surrounding the retention of the money are as follows:<sup>3</sup>

Although it was against petitioner's rules for the drivers to extend credit to customers, they nevertheless occasionally did so (R. 18; 78, 81). The drivers considered themselves personally liable for the credit extended (R. 18; 61, 74, 78), and posted cash bonds with petitioner sufficient in amount to cover the credit extended (R. 19; 61, 74). After June 26, 1941, when the strike was called, eight of the drivers who had thus extended their personal credit collected and retained sums due for laundry bundles which they had previously left

<sup>2</sup> One of the two testified that he did not desire reinstatement; the other was convicted of a misdemeanor for which he was fined \$500 and given a one-year suspended jail sentence (R. 17-18).

<sup>3</sup> In the following statement of facts the references preceding the semicolon are to the Board's findings and the succeeding references are to the supporting evidence.



with customers, for the purpose of offsetting their claims against petitioner for salary and commissions due them for work done during the three days preceding the strike and for their cash bonds in the possession of petitioner (R. 18, 19; 72-73, 81-82). Between July 10 and 15, 1941, petitioner sent a letter to each of these drivers requesting him to call at the office of petitioner's president, Berger, and make an accounting for any money belonging to petitioner (R. 18; 72, 141). The drivers consulted with the Union's attorney, Keane, about the letters, and he persuaded them not to see Berger individually but to permit him, Keane, to negotiate with Berger for them (R. 18; 58, 72, 120). Keane then consulted with Berger and petitioner's counsel upon several occasions about a settlement of the accounts. The parties were unable to agree on the amounts which the drivers owed, since Berger asserted that they were responsible for business done for the entire week during which the strike was called, although new and nonstriking drivers were operating the routes during the last three days of the week. (R. 18-19; 58, 70-71, 74, 118-119, 121-124, 162.) Keane, on behalf of the drivers, offered to turn over to Berger the amounts which the drivers collected, but Berger refused to accept such amounts, saying that he did not want "piecemeal" settlements (R. 123-124, 74, 81).<sup>4</sup> At the time of the hearing, the

---

<sup>4</sup> One of the striking drivers, Randolph, after receiving a letter from Berger requesting an accounting, abandoned the

differences had not been resolved and a final accounting had not yet been made (R. 19; 57, 124).<sup>5</sup>

Petitioner had on deposit from its drivers cash bonds sufficient to cover the amount which the drivers had collected and retained; moreover, some of the drivers had solicited and collected rugs and furs which were in storage and upon which, in the normal course of events, petitioner would owe them substantial amounts in commissions (R. 19; 61-62, 72-74, 82, 118-119, 163).

Upon the above facts the Board concluded that "the strikers who retained money acted in good faith and with color of legal right; and that [petitioner] does not plead their alleged wrongdoing in good faith, but rather as a further device to avoid the consequences of its unfair labor practices" (R. 19-20).

---

strike and returned to work (R. 19; 53, 165-166). In his case, as in the case of the eight strikers here under consideration, there was a disagreement with respect to the amount he owed, but petitioner compromised the difference and accepted an amount less than that which it claimed Randolph owed (R. 19; 165, 166). As the Board pointed out, "From all that appears, the principal difference that existed between Randolph and the other drivers who owed money was that he abandoned the strike and they continued it. The retention of funds by Randolph did not bar his reinstatement; [petitioner] has shown no bona fide or convincing reason why other striking drivers should be treated differently" (R. 19).

<sup>5</sup> Although Berger had consulted the local district attorney with regard to filing charges of embezzlement against the drivers, no proceedings had been instituted against them prior to the hearing (R. 19; 164), or, so far as the record discloses, since the hearing.

On August 8, 1942, the Board filed in the court below a petition for enforcement (R. 243-247), and on November 6, 1942, the court below handed down its *per curiam* opinion (R. 251-253) and entered its decree (R. 254) enforcing the Board's order.

#### ARGUMENT

Petitioner claims that the Board erred in ordering the reinstatement of eight strikers because they collected and retained moneys which petitioner claimed belonged to it but which did not exceed other amounts which the strikers claimed petitioner owed them. The Board's finding that the strikers' action was in good faith and under color of right (R. 19-20) was accepted by the circuit court of appeals (R. 253) because it has ample support in the following facts of record: On occasion drivers would extend credit to customers, contrary to petitioner's rules, but petitioner was well protected by cash bonds which it had required the drivers to post (R. 61, 74, 78, 82). The moneys which the strikers collected were payments for the laundry bills for which they, as drivers, had allowed credit (R. 61, 74, 81), and which would have been charged against their cash bonds had they not collected (R. 78). Petitioner did not return the cash bonds to the strikers, nor pay them the three days' pay and the commissions on fur and rug storage which the strikers claimed peti-

tioner owed them. The strikers, on the other hand, refused to pay anything to petitioner until petitioner paid them, although the strikers offered settlement (R. 61, 73-74, 123-124).

Petitioner's contention that a conflict exists between the decision below and other decisions is based on its bizarre construction of Maryland law that the strikers' conduct is embezzlement.<sup>6</sup> This construction is not supported by the face of the state statute nor by the state decision cited (*Crouse v. State of Maryland*, 163 Md. 431). It was not accepted by the circuit court of appeals (R. 252-253) for the circuit which embraces Maryland. It is, therefore, a question which this Court will not review. *Helvering v. Stuart*, decided November 16, 1942, Nos. 48 and 49, this Term.

As the conduct of the strikers whose reinstatement was ordered was not unlawful and did not involve any use of force, the decision below ordering reinstatement is not in conflict with *National*

---

<sup>6</sup> In support of its finding that the strikers were acting under color of legal right, the Board quoted the following (R. 20) from Section 464, *Restatement of Agency*:

"When Agent Has Lien :

"Unless he undertakes duties inconsistent with such a right or otherwise agrees that it is not to exist :

"(a) an agent has a right to retain possession of money, goods, or documents of the principal, of which he has gained possession in the proper execution of his agency, until he is paid the amount due him from the principal as compensation for services performed or as indemnity for money advanced or liability incurred by him in connection with such things."

*Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, or with *National Labor Relations Board v. Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6), as asserted by petitioner.

CONCLUSION

The decision of the court below is correct and presents neither a conflict of decisions nor any question of general importance. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

VALENTINE BROOKES,  
*Attorney.*

ROBERT B. WATTS,  
*General Counsel,*

ERNEST A. GROSS,  
*Associate General Counsel,*

RUTH WEYAND,  
FANNIE M. BOYLS,  
*Attorneys,*

*National Labor Relations Board.*

MARCH 1943.

